IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1789 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
OCTOBER 10, 2006.

Heard Shri Mardikar, learned counsel for the petitioner – defendant and Shri Gode, learned counsel for respondents No. 1C to 1H.

It appears that after remand by appellate Court the issue before the trial Court was of proof of Will which was propounded by the defendant. The Court below, therefore, has permitted defendant to lead evidence and applications moved by plaintiff to lead evidence were not entertained observing that they will be permitted to adduce evidence, if found necessary.

In these circumstances, when the defendant completed his evidence, the plaintiff again moved application vide Exh.

106 on 21.10.2005 and that application has been allowed on 3.12.2005.

The learned counsel for the petitioner contends that earlier on 10 to 11 times, the matter was adjourned to accommodate the plaintiff in the matter and plaintiff did not enter the witness box. In these circumstances because of his previous conduct the Court ought not to have permitted the respondents to lead evidence. It is contended that the order is, therefore, unsustainable.

Shri Gode, learned counsel states that looking to the nature of controversy and liberty granted earlier, the orders are passed.

The perusal of similar applications vide Exhs. 96 and 97 by the plaintiff show that the trial Court was aware that Will was to be proved by present petitioner and hence present petitioner was directed to lead evidence first. While passing those orders, the Court has expressly mentioned that if need arises, the respondent – plaintiff will be permitted to lead evidence. It is, therefore, apparent that by the impugned order, the respondents have been permitted to lead evidence in rebuttal.

In the circumstances, there is no jurisdictional error or perversity in the impugned order. Writ Petition is dismissed. No order as to costs.

JUDGE

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